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No. 85-1821

Supreme Court, U.S.
FILED
NOV 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF UTAH, DUCHESNE COUNTY, UTAH, UINTAH COUNTY, UTAH, ROOSEVELT CITY and DUCHESNE CITY, UTAH

Petitioners,

v.

UTE INDIAN TRIBE,

Respondent.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Tenth Circuit

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SUPPLEMENTAL BRIEF FOR PETITIONERS

DAVID L. WILKINSON
Utah Attorney General
DALLIN W. JENSEN
Solicitor General
MICHAEL M. QUEALY
R. DOUGLAS CREDILLE
Assistant Attorneys General
1636 West North Temple
Suite 300
Salt Lake City, Utah 84116
(801) 533-4446

Attorneys for the State of Utah

A. RAYMOND RANDOLPH
Counsel of Record
Special Assistant
Attorney General for the
State of Utah

RANDOLPH & TRUITT
1752 N Street, N.W.
Suite 801
Washington, D.C. 20036
(202) 785-3100

TOM D. TOBIN
Tobin Law Offices, P.C.
422 Main Street
Winner, South Dakota 57580
(605) 842-2500

DENNIS L. DRANEY
Duchesne County Attorney
Roosevelt City Attorney
P.O. Box 206
Duchesne, Utah 84021

MARK W. NASH
Uintah County Attorney
State and County Building
Vernal, Utah 84078

ROLAND URESK
Duchesne City Attorney
Roosevelt, Utah 84066

Attorneys for the County
and City Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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SUPPLEMENTAL BRIEF FOR PETITIONERS

This brief is filed in response to the Brief for the United States as *amicus curiae* expressing the views of the United States in response to the Court's invitation.

The United States agrees with us that the Uncompahgre Reservation ceased to exist nearly a century ago when Congress returned the area to the public domain. The United States does not agree that the original Uintah Reservation was diminished at about the same time. There are but 20,000 people living in these areas and the reservation boundaries are, ac-

cording to the United States, of such little practical importance that certiorari should be denied. We think the Court has been more sensitive to the people affected.[1] Moreover, the federal government incredibly overlooks the fact that hundreds of millions of dollars

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[1] In *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977); *Mattz v. Arnett*, 412 U.S. 481 (1973); and *Seymour v. Superintendent*, 368 U.S. 351 (1962), there was no conflict in the lower federal or state courts, relatively few people were involved and the land areas were relatively small. The Court nevertheless granted the petitions for certiorari.

Although, as the United States indicates, there is no direct conflict between the decision below and any Utah court (U.S. Brief, at pp. 6, 14, 20), this is only because *Brough v. Appawora*, 553 P.2d 934 (Utah 1976) was vacated and remanded for reconsideration but was never subsequently redecided. 431 U.S. 901 (1977); see Pet. 19. The fact remains, however, that as early as 1910 the Utah courts assumed that the original Uintah reservation had been restored to the public domain and so stated. See *Sowards v. Meagher*, 37 Utah 212, 216-217, 108 P. 1112, 1114 (1910); *Whiterocks Irrigation Co. v. Mooseman*, 45 Utah 79, 82, 141 P.459, 460 (1914). The record also shows that since then neither the State nor local governments treated the area in question as part of the Indian reservation.

are at stake in this case.[2]

This is far from the first reservation boundary case to reach the Court and unless the court of appeals' misreading of *Solem v. Bartlett*, 465 U.S. 463 (1984), is corrected it surely will not be the last.[3] Inevitably none of these cases involves large population centers. But it is always of major consequence to the non-Indians in the disputed area whether their lives will become enmeshed in the intricate web of federal Indian law and Tribal codes governing affairs within

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[2] It is odd for the federal government to oppose certiorari. As to the original Uncompahgre Reservation, the federal government itself petitioned for certiorari in a case involving a mere 10,000 acres within that area; the Court granted the petition and by the time of its decision, nearly $130 million in revenue from oil shale leasing there was at stake. *Andrus v. Utah*, 446 U.S. 500 (1980). This money, which was being held in the district court, was ultimately distributed to the Department of the Interior and a large percentage of it was returned to the State under 30 U.S.C. § 191. The Tribe has claimed that if Uncompahgre is a reservation today all of $130 million and future revenues should be credited to it. See pp. 11-13 *infra*.

In *Appawora v. Brough*, 431 U.S. 901 (1977), the United States thought the question whether the original Uintah Reservation existed undiminished was sufficiently important that the Court should treat Appawora's appeal raising this issue as a petition for certiorari, grant the petition and vacate and remand for consideration in light of *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977), which is what the Court did. See Memorandum for the United States as *Amicus Curiae*, in No. 76-815, Oct. Term 1976; see also our Petition here, at p. 19 n. 34.

[3] See Brief for the States of South Dakota, et al., as *Amici Curiae* In Support of Petitioners. In addition to New Mexico, which was also on the Brief, the States of California, Montana, Washington and Wyoming formally expressed a desire to join the Brief after it was filed in this Court.

the boundaries of an Indian reservation. See *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 105 S. Ct. 2447, 2452 (1985); *Iowa Mutual Ins. Co. v. LaPlante*, No. 85-1589, certiorari granted May 27, 1986. This case is no exception and in the discussion that follows we will demonstrate why. We begin, however, with the federal government's position regarding the original Uintah Reservation, a position that not only contradicts what it represented in earlier litigation but also fails to reveal the divergence of views on this subject within the federal government itself.

1. Reservation boundary cases tend to be complex, but our position here is straightforward. Congressional intent, as reflected in the statutory language, is the critical consideration. *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 586 (1977). We have maintained that the unallotted land within the original Uintah Reservation was restored to the public domain pursuant to the 1902 Act (32 Stat. 263), as the President proclaimed shortly after passage of the 1905 Act (33 Stat. 1069). We have further contended that when an area has been restored to the public domain, that area ceases to be part of an Indian reservation.

One cannot tell from the Brief of the United States whether it contests either of these essential propositions. It devotes considerable attention to the 1905 Act, stressing that it incorporated no cession agreement,[4] contained no provisions extending liquor laws

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[4] After *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), one was not needed and the Court held in *Rosebud* that the fact that Congress acted unilaterally "does not have any direct bearing on the question of whether Congress by these later Acts did intend to diminish the Reservation boundaries." 430 U.S. at 587.

or granting school sections,[5] and did not precisely define the lands opened for non-Indian settlement, leaving this to the President's discretion by authorizing him to decide how much of the land should be used for forest and reclamation reserves.[6] U.S. Brief, at pp. 7-10. Without ever having stated its view on whether the disputed area was in fact restored to the public domain in 1905, as we contend, the United States leaves the 1905 Act and turns its attention to the 1902 Act. On that topic, the United States again skirts the issue. It says that when a statute merely contains "a reference to 'public domain' " this is not dispositive (U.S. Brief, at p. 11), which is correct but beside the point in this case. Here we have no mere legislative "reference" to public domain, as in *Solem*, but—and this makes all the difference—actual restoration of the land to the public domain pursuant to statute. The issues posed thus remain unanswered by the federal government's Brief—was the area returned to the public domain and, if so, may it still be regarded as part of the original Uintah Reservation?

The United States was far more precise when it litigated a related case in the Court of Claims against the Ute Indians. *Uintah and White River Bands of Ute Indians v. United States*, 139 Ct. Cl. 1 (1957). There it entered into a Stipulation, which it acknowledges for the first time in this lawsuit in a footnote. U.S. Brief, at pp. 13-14 n. 7. This Stipulation, with

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[5] The federal government previously thought these factors had no significance to the reservation issue and so stated in its *amicus* Brief in *Solem v. Bartlett*, at pp. 14 n.14, 16 n.16.

[6] We think this cuts the other way. See pp. 8-9 *infra*.

which the Court of Claims agreed (139 Ct. Cl. at 5-6, 22), quoted the 1902 Act and then succinctly stated the critical point: "Pursuant to this [1902] Act and amendments thereto, more fully set out hereafter, allotments in severalty, aggregating 39,349.84 acres by 1905, were made to the Uintah and White River Indians, and surplus lands (with the exception of the forest reserve and reclamation withdrawals and certain mineral entries) *were restored to the public domain*, and opened for disposition under the public land laws for the benefit of the Indians." See Addendum A to this Brief, at 11a-12a (emphasis added). What is more, the United States (and the Bands) consistently and repeatedly maintained that the original Uintah Reservation was a former reservation (Addendum A, *infra*, at pp. 15a, 16a, 18a, 23a); and throughout its opinion and findings, the Court of Claims also treated the original Uintah Reservation as having ended. *E.g.*, 139 Ct. Cl. at 2, 25, 28,56,64,69,70. No amount of tergiversation by the United States at this late date[7] can change what had

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[7] The United States asserts that its Stipulation "carries little weight here" (U.S. Brief, at p. 13 n.7). The explanation that follows is difficult to comprehend. This is the most we can make of it: that the Stipulation's "restored to the public domain" language was an error. As we argue in the text, we believe the error is in the federal government's new and contradictory position.

The United States also has trouble explaining why it represented Uintah to be a "former" reservation in the Stipulation. It does say that it entered into the Stipulation before 1962, when *Seymour* was decided. But we would have supposed that if the reservation did not exist before then, it does not exist now. Moreover, how the federal government had been treating

been its well-considered (and correct) position on a matter of statutory interpretation. The United States was not alone in its interpretation. President Roosevelt also understood that the disputed area was returned to the public domain, as did the Commissioner of Indian Affairs, the Solicitor of the Department of the Interior, the Committees of Congress, the Tenth Circuit in an earlier decision (*Hanson v. United States*, 153 F. 2d 162 (10th Cir. 1946)), and the panel of the court of appeals in this case (Pet. App. 88a-93a). When the Ute Indian plaintiffs appeared in the Court of Claims they summed it up well: "Now, the Act of May 27, 1902, comes as a matter of particular importance in this suit because that is the Act as amended under which the Uintah Reservation was ultimately broken up."[8]

As we have said, it is not clear whether the United States believes that land returned to the public domain can still be considered to be within an Indian reservation. That was how the court below read *Solem* and we have explained before why it erred in doing so. Pet. 14-15, 18-19. Each of this Court's reservation boundary cases before *Solem* recognized that when an area has been so restored, reservation status ends; on this one point, the Court was unanimous. *See Rosebud*, 430 U.S. at 589 & n.5; *id.* at 618 (Marshall, J., dissenting); *DeCoteau v. District County Court*, 420 U.S. 426-27, 446; *id.* at 463 (Douglas, J., dissenting); *Mattz v. Arnett*, 412 U.S. 481, 504 n. 22 (1973); *Sey-*

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the area is a matter of fact, which neither *Seymour* nor any other decision can alter.

[8] Opening Statement in Testimony for Plaintiff, No. 47569, United States Court of Claims, at page 195 (January 11, 1954) (*Uintah and White River Bands of Ute Indians v. United States*).

mour v. Superintendent, 368 U.S. 351, 354-55 (1962). The Court in *Solem* could not possibly have intended, by one oblique remark citing no authority (465 U.S. at 475), to disagree with these decisions, cast aside two centuries of federal jurisprudence and overrule "one of the fundamental principles underlying the land system of this country" (*Hastings and Dakota Railroad Co. v. Whitney*, 132 U.S. 357, 360-61 (1889)). Indeed, the principle we invoke is so fundamental that it is recited in the Utah Enabling Act of 1894,[9] serves as the foundation for the federal reserve water rights doctrine[10] and is reflected throughout federal land laws, including the laws governing the national forest system.[11] See also *Felix Cohen's Handbook of Federal Indian Law* 209 and n. 19 (1982 ed.) (" 'Public domain' refers to public lands which have not been reserved or set aside for any specific purpose"). If the United States, through its Brief in this case, intends to dispute this point, it is quite simply mistaken.

2. This brings us to the question of the Ashley and Uinta National Forest and the High Uinta Wilderness,

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[9] 28 Stat. 109, quoted in *Andrus v. Utah*, *supra*, 446 U.S. at 502 n.1 ("nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become part of the public domain").

[10] See *e.g.*, *Cappaert v. United States*, 426 U.S. 128, 138 (1976) ("This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose. . . .")

[11] See, *e.g.*, 16 U.S.C. 1609(a) ("no land now or hereafter reserved or withdrawn from the public domain as national forests . . . shall be returned to the public domain except by Act of Congress").

a national forest reserved by President Roosevelt in 1905 from land that had been in the original Uintah Reservation. The treatment of these 1 million acres is significant because, if the original Uintah Reservation was thereby diminished, as we maintain it was, there would be no basis whatsoever for claiming that *any* of the disputed area has retained reservation status since 1905. The President, after all, had complete discretion to choose what portion of the region he wished to reserve for a national forest.

The Brief of United States insists that the forest reserve was then and is today simultaneously part an Indian reservation, an anomaly Congress supposedly intended in 1905. The Forest Service of the United States Department of Agriculture, which has administered this forest reserve throughout this century, has viewed the matter quite differently. In a letter to the Governor of Utah in 1977, which we reprint as an Addendum,[12] the Forest Service stated that this national forest was not part of an Indian reservation, adding that "we believe the original [Uintah] Reservation boundaries were disestablished and the present Reservation boundaries include only the trust lands (Addendum B, *infra*, at 25a, 26a). (That, of course, agrees with what this Court stated in *Affliated Ute Citizens v. United States*, 406 U.S. 128, 141 (1972).)

According to the United States, there is no "inherent inconsistency" in a national forest reserve

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[12] The letter was admitted into evidence. Ex.I-5. However, the Forest Service's Director of Lands testified that he had later been instructed by the Department of Justice not to state any position on the question of reservation boundaries. Tr. 234 (Aug. 2, 1979).

being part of land reserved for an Indian Tribe. U.S. Brief, at p. 16. After saying that, the United States proves just the opposite. It promises that the forest reserve will be administered as if it were not within an Indian Reservation because Indian laws and Tribal jurisdiction will be "preempt[ed]" by the laws governing national forests—in short, that there is indeed a conflict, but that federal forest laws will prevail. We are not so certain. The Ute Tribe, on the basis of its reservation boundary claim, has already insisted upon special hunting and fishing rights within the national forest, "full control of camping and recreation on 989,000 acres," and the right to be consulted regarding all plans of the Forest Service pertaining to "camping, boating, fishing and other forms of public recreation" (Addendum B, *infra*, at 25a, 26a).

Apparently, the United States supports this extraordinary result because the Tribe retained an interest in the land even after it was reserved for a national forest, which is what the court below thought as well. U.S. Brief, at p.16. The United States confuses the matter. To be sure, the Tribe received proceeds from timber sales for fifteen years after 1905 (*id.*), but that does amount any interest in the land itself. The United States should know this as well as anyone. The very point of *Uintah and White River Bands of Ute Indians v. United States*, *supra*, was that in 1905, the United States deprived the Ute Indians of all right, title and interest in the forest lands; it was on this basis that the Court of Claims found that there had been a taking within the meaning of the Fifth Amendment and entered judgment for the Ute Indians against the United States, with interest

from July 1905, the date the forest reserve was created. See 139 Ct. Cl. at 11-12, 97.

3. In saying that the case lacks importance, the United States offers not even a single reason why, with respect to the original Uintah Reservation, the disputed area *ought* to be considered part of an Indian reservation today. Living there are 18,000 non-Indians and very few, if any members of the Ute Tribe. Neither the Tribe nor its members own any appreciable amount of land in the disputed area.[13] If the federal government thinks it is promoting some Tribal interests by its stance in this case, what are those interests? We do not know because the United States never addresses the subject. It did speak out, however, in its *amicus* brief in *Solem v. Bartlett*, and what it then said is worth repeating: "In cases where the opened area of a Reservation was entirely—or almost entirely—sold off to non-Indian settlers before the process was halted by the change of policy enacted in 1934, it may well be right to treat the Reservation as diminished today. . . . Then, as now, it must have seemed artificial to continue to treat as part of Indian Reservation a discrete area, typically of large dimensions, once both land ownership and population ceased to be Indian. . . . All else aside, this explains the result in *Rosebud*. . . . At some point, the tail can no longer wag the dog."[14]

With respect to the original Uncompahgre Reservation, the United States asserts that the reservation

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[13] See Addendum A, at p. 12a; 139 Ct. Cl. at 22; Pet. App. 223a.

[14] Brief for the United States as *Amicus Curiae* Supporting Respondent, at pp.20-21, in *Solem v. Bartlett*, No. 82-1253, Oct. Term 1983.

status of the lands there is "of little practical importance" (U.S. Brief, at p. 20). The United States could not be more mistaken. It is certainly important how hundreds of millions of dollars are distributed. Nearly $130 million had been accumulated from an oil shale leasing program on the two small tracts within the original Uncompahgre Reservation at issue in *Andrus v. Utah*, 446 U.S. 500, 503 n.2 (1980). The Ute Tribe seeking to intervene, contended in this Court that if the original Uncompahgre Reservation still exists, all of this money, which the federal government collected, must be deposited to the credit of the Tribe under 25 U.S.C. § 398b (proceeds from oil and gas leases on Executive Order Indian reservations). Citing this provision, the Tribe also stated that if it could not intervene and if its reservation claim were sustained in this case, it would begin litigation against the federal government "to recapture those funds." Motion for Leave to Intervene, at p. 15, in *Andrus v. Utah*.

All of this is of enormous consequence to the State and to the counties and cities who are Petitioners here. The federal government ultimately prevailed in *Andrus* and received the $130 million. But under 30 U.S.C. § 191, the federal government returns 50 percent of such revenues to the State and, under the same statute, the State gives priority in distributing these funds to the political subdivisions affected. The Uintah basin is extremely rich in oil and gas[15] and

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[15] It has been estimated, for example, that within Uintah County alone there are potential reserves of 1 billion barrels of oil, 2 billion thousand cubic feet of natural gas, and 950-1500 billion barrels of oil in oil shale. See Boettcher & Co., *Prelim-*

at least according to the Tribe's claims, whether the State and its subdivisions continue to receive 50 percent of such revenues turns on the reservation status of the lands.

The United States also asserts that the 18,000 non-Indians in the disputed area will not be "significantly affected by the decision below" because the Tribe will not be permitted to exercise "significant" authority over them. U.S. Brief, at p. 15. We are not so confident. The record shows that the Tribe has already attempted to exercise such significant authority. Its Law and Order Code contains more than 600 sections in 162 pages of closely printed type and asserts detailed authority over all persons living or travelling within the boundaries of its Reservation, wherever those boundaries may be. The Code provides, for example, that all dogs "within any town or city within the exterior boundaries of the Reservation" must be innoculated against rabies within certain intervals and must carry a tag issued by the Tribe (§ 9-1-3(1)). The Tribe has also authorized itself to adopt regulations governing the transportation of any animal "through the Reservation by tourists, common carriers and the like" (§ 9-1-5, 9-1-8). It has issued a detailed traffic code and believes that it may take "non-Indian traffic offender[s]" to State courts for disposition (§ 10-1-4). It has the power, according to its Code, to exclude and remove "persons" from the Reservation who threaten "the peace, health, safety, morals and general welfare of the Tribe," if necessary even without a hearing before the Tribal Court (§§ 3-1-3, 3-1-4).

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inary Official Statement for Uintah County, Utah, General Obligation Refunding Bonds A-9–A-10 (1985).

Perhaps all or some of these and numerous other measures will not ultimately be sustained under the general standard of *Montana v. United States*, 450 U.S. 544 (1981), which the federal government recites. U.S. Brief, at p. 15. On the other hand, the United States is claiming in another case before this Court that a Tribe's civil jurisdiction within its Reservation boundaries is "very broad" and that the "authority to regulate conduct on the reservation is one fundamental aspect of tribal self-government protected by federal policy." Brief For the United States as *Amicus Curiae* Supporting Respondents, at pp. 9-10, in *Iowa Mutual Ins. Co. v. LaPlante*, No. 85-1589, cert. granted May 27, 1986.

One thing, however, is certain. The decision below has condemned the non-Indians in the disputed area and the State and local governments to endless rounds of needless litigation, in State, tribal and federal courts, in order to sort out the details of who regulates what and whom in an area that lost its Indian character nearly a century ago. That, we submit, is a matter of overwhelming "practical importance."

Finally, we welcome the assurances of the United States that Taylor Grazing Act leases will not be cancelled although the Act itself provides otherwise, that the State will continue to share in the proceeds from the national forest (which has more than 400,000 visitor-days per year) even though it is deemed part of an Indian reservation, that mining interests will not be affected, that school sections will not have to be returned and so forth. U.S. Brief, at 17, 20-21 & n.12. But these matters may not be entirely up to the federal government. The courts may have a role. And we cannot help but note that the position the

United States espouses in a court, even this Court, is not always immutable, as this case all too vividly demonstrates.

CONCLUSION

For the foregoing reasons and the reasons previously stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID L. WILKINSON
Utah Attorney General
DALLIN W. JENSEN
Solicitor General
MICHAEL M. QUEALY
R. DOUGLAS CREDILLE
Assistant Attorneys General
1636 West North Temple
Suite 300
Salt Lake City, Utah 84116
(801) 533-4446

Attorneys for the State of Utah

A. RAYMOND RANDOLPH
Counsel of Record
Special Assistant
Attorney General for the
State of Utah
RANDOLPH & TRUITT
1752 N Street, N.W.
Suite 801
Washington, D.C. 20036
(202) 785-3100

TOM D. TOBIN
Tobin Law Offices, P.C.
422 Main Street
Winner, South Dakota 57580
(605) 842-2500

DENNIS L. DRANEY
Duchesne County Attorney
Roosevelt City Attorney
P.O. Box 206
Duchesne, Utah 84021

MARK W. NASH
Uintah County Attorney
State and County Building
Vernal, Utah 84078

ROLAND URESK
Duchesne City Attorney
Roosevelt, Utah 84066

Attorneys for the County
and City Petitioners

ADDENDUM

ADDENDUM A

No. 47569

No. 47570

THE UINTAH AND WHITE RIVER BANDS OF UTE INDIANS,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

STIPULATION

Filed January 4, 1954

IN THE UNITED STATES COURT OF CLAIMS

No. 47569

No. 47570

THE UINTAH AND WHITE RIVER BANDS OF UTE INDIANS,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

STIPULATION

It is agreed between the parties, in the above-captioned cases, for the purpose of these cases and no other purpose, as follows:

1. In pre-white times, Indians who have since come to be known as Utes, Southern Paiutes, and Shoshones lived within the territory now included in the State of Utah.

2. By Executive Order of October 3, 1861, (I Kappler 900) the "Uintah Valley" was "reserved to the United States and set apart as an Indian reservation." In the absence of an authorized survey, the area set apart was described as follows:

> ". . . the entire valley of the Uintah River within Utah Territory, extending on both sides of said river to the crest of the first range of contiguous mountains on each side . . ."

The lands which are involved in the above-captioned cases are within the area so described. A copy of the said Executive Order is appended hereto (Appendix A) and incorporated by reference.

3. By an Act of May 5, 1864, (13 Stat. 63) it was provided

> "... That the superintendant of Indian affairs for the Territory of Utah be, and he is hereby, authorized and required to collect and settle all or so many of the Indians of said territory as may be found practicable in the Uintah Valley, in said territory, which is hereby set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said territory as may be induced to inhabit the same."

A copy of the said Act is appended hereto (Appendix B) and incorporated by reference.

4. By an Act of February 23, 1865, (13 Stat. 432) "... to Extinguish The Indian Title to Lands In The Territory of Utah Suitable For Agricultural And Mineral Purposes [,]" the President was authorized and directed to enter into treaties with the various tribes of Indians of Utah Territory, providing for the surrender of their possessory right to all such lands, except such part as might be set apart for reservations. A copy of the said Act is appended hereto (Appendix C) and incorporated by reference.

5. Pursuant to the Act of February 23, 1865, treaties were negotiated with the "Pie-ede or Pah-Ute" Indians on September 18, 1865 (unpublished), the "Weber Ute" on October 30, 1865, (5 Kappler 698), and various groups of "Utah" Indians on June 8, 9, and 10, 1865 (5 Kappler 695). None of the said treaties was ever ratified.

6. The Indian parties to the treaty negotiated on June 8, 9, and 10, 1865, commonly referred to as the Spanish Fork Treaty, were designated therein as the "... Utah, Yampah Ute, Pah-Vant, Sanpete Ute, Tim-p-nogs and Cum-nm-bah Bands of the Utah Indians occupying the lands within Utah Territory, ..." The said treaty provided for

the cession by said Indians of "all their possessory right of occupancy" to an area described therein, reserving a designated part thereof for their exclusive use and occupation as follows:

> "Art. II. There is however reserved for the exclusive use and occupation of the said tribes the following tract of lands; viz 'the entire valley of the Uintah River within Utah Territory extending on both sides of said river to the crest of the first range of contiguous mountains on each side' which said tract shall be, so far as is necessary, surveyed and marked out, set aside and reserved for their exclusive use and occupation nor shall any white person, unless he be in the employ of the Indian authorities, be permitted to reside upon the same, without permission of the said tribe, and of the Superintendent of Indian Affairs or United States Indian Agent. It is however understood that should the President of the United States hereafter see fit to place upon the reservation, any other friendly tribe or bands of Indians of Utah Territory, to occupy the same in common with those above mentioned, he shall be at liberty to do so.
>
> "Art. III. The said tribes and bands agree to remove to an settle upon the said reservation within one year after the ratification of this treaty, provided the means are furnished them by the United States to enable them to do so—In the meantime it shall be lawful for them to reside upon any land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied if with the permission of the owner."

A copy of this unratified treaty is appended hereto (Appendix D) and incorporated by reference.

7. From time to time after 1865, various individuals and groups of Indians residing in Utah Territory, other than those who were in Uintah Valley at the time, moved into

the area described in the Executive Order of October 3, 1861, and the unratified Spanish Fork Treaty of 1865, and set apart by the Act of May 5, 1864, *supra.* An Indian agency was established known as the Uintah Valley Agency, and the area became known as the Uintah Indian Reservation or the Uintah Valley Reservation. A substantial number of the said Indians, so located on the reservation, and their descendants since them have continued to live upon the reservation, have received individual allotments thereon pursuant to the Act of May 27, 1902, as amended (see paragraph 16 hereof), and are now all known as Uintah or Uintah Ute Indians. Since 1936 they have been a constituent group of the "Ute Indian Tribe of the Uintah and Ouray Reservation," an Indian Reorganization Act (48 Stat. 984) corporation, composed of Uintah, White River, and Uncompahgre Ute Indians.

8. On March 2, 1868, a treaty was concluded (and subsequently ratified and proclaimed, 15 Stat. 619) between the United States and Indian parties designated therein as "the Tabequache, Muache, Capote, Weeminuche, Yampa, Grand River, and Uintah Bands of Utes," "sometimes referred to thereafter as the "Confederated Bands of Ute Indians." Article II of the said treaty set apart a large reservation, wholly within the Territory of Colorado, for the use and occupation of the Indians therein named, and for such other friendly Indians as they might be willing to admit among them. By Article III the Indians, parties thereto, relinquished all claims and rights in and to any other territory not included within the reservation. Article IV provided for the establishment of two agencies upon the reservation, "one for the Grand River, Yampa, and Uintah bands, on White River, and the other for the Tabequache, Muache, Weeminuche, and Capote Bands on the Rio de los Pinos. . ." The said agencies were established and Indians associated with the White River Agency in northwest Colorado came in time to be known as White River Utes or the White River Band of Ute Indians. A

copy of the said treaty of 1868 is appended hereto (Appendix X) and incorporated by reference.

9. By an agreement, approved by the Act of June 15, 1880, (21 Stat. 199), with the "Confederated Bands of Ute Indians in Colorado," it was provided that the Indians would cede the then remaining portions of the Ute Reservation in Colorado. The agreement provided for stated considerations to the Indians and that reservations be established for them, as follows:

> "The Southern Utes agree to remove to and settle upon the unoccupied agricultural lands on the La Plata River, in Colorado; and if there should not be a sufficiency of such lands on the La Plata River and in its vicinity in Colorado, then upon such other unoccupied agricultural lands as may be found on the La Plata River or in its vicinity in New Mexico.
>
> "The Uncompahgre Utes agree to remove to and settle upon agricultural lands on Grand River, near the mouth of the Gunnison River, in Colorado, if a sufficient quantity of agricultural land shall be found there, if not then upon such other unoccupied agricultural lands as may be found in that vicinity and in the Territory of Utah.
>
> "The White River Utes agree to remove to and settle upon agricultural lands on the Uintah Reservation in Utah.

A copy of the said Agreement of 1880 is appended hereto (Appendix E) and incorporated by reference.

10. Pursuant to the Agreement and Act of June 15, 1880, supra, the White River Utes were removed to the Uintah Reservation beginning in about November of 1881. Pursuant to the same Act and subsequent legislation they were given individual allotments on the Uintah Reservation, (see Paragraph 16 hereof). In general, the White River Ute Indians so removed to the reservation, and their

descendants since them have continued to live upon the reservation and are a constituent group of the "Ute Indian Tribe of the Uintah and Ouray Reservation."

11. Pursuant to Section 2 of the Act of June 15, 1880, *supra,* a commission reported that it had examined the land on the Grand River near the mouth of the Gunnison, and had found insufficient suitable land for the Uncompahgre Utes. A tract of land in the valleys of the White and Green Rivers in Utah (south and east of the Uintah Reservation) was selected by the said commission and approved by the Secretary of the Interior for the settlement of the Uncompahgre Utes, who removed thereto by October 1881. The Uncompahgre Reservation in Utah was established by Executive Order of January 5, 1882, (I Kappler 901), a copy of which is appended hereto (Appendix F) and incorporated by reference.

12. An Act of May 24, 1888 (25 Stat. 157), a copy of which is appended hereto (Appendix G) and incorporated by reference, provided that a designated portion of the Uintah Valley Indian Reservation should be restored to the public domain and sold upon ratification by three-fourths of the adult-male Indians residing on the reservation. The Act provided further,

> "... That all moneys arising from the sales of this land shall belong to said Indians and be paid into the Treasury of the United States and held or added to any trust funds of said tribes now there."

Pursuant to this Act, lands were sold by the United States and receipts therefrom in the amount of $22,417.93 were credited to the benefit of the Uintah and White River Bands of Ute Indians. Pursuant to the Act of May 27, 1902, (32 Stat. 245, 263), as amended by the Joint Resolution of June 19, 1902, (32 Stat. 744) (see paragraph 17 hereof), an additional $10,000 was appropriated and paid to the Uintah and White River Utes to cover claims for

lands detached from the reservation pursuant to the Act of May 24, 1888, *supra.*

13. An Act of August 15, 1894 (28 Stat. 286, 337) a copy of pertinent portions of which is appended hereto (Appendix H) and incorporated by reference, directed the appointment of a commission (1) to make allotments in severalty to the Uncompaghre Indians within the reservation referred to in paragraph 11, with a provision that the Uncompaghres would be required to pay $1.25 per acre, for the lands so allotted, from out of the proceeds of the sale of their Colorado lands under the 1880 Agreement and Act; and (2) to "negotiate and treat with the Indians properly residing upon the Uintah Indian Reservation, in the Territory of Utah, for the relinquishment to the United States of the interest of said Indians in all lands within said reservation not needed for allotment in severalty to said Indians, . . ." The said commission was appointed but on January 8, 1895, reported that it had encountered difficulty in explaining to the Uncompaghres why they would be required to pay $1.25 per acre for their allotments, whereas the Indians on the Uintah Reservation would not be required to pay for their allotments. As a consequence, no allotments or agreements for cession of unallotted lands were made.

14. The Act of January 7, 1897 (30 Stat. 62, 87), the pertinent provisions of which are appended hereto (Appendix I) and incorporated by reference, directed the Secretary of the Interior to allot in severalty, to the Uncompahgre Ute Indians on the Uncompahgre Reservation, lands in the Uncompahgre Reservation, or the Uintah Reservation, or elsewhere in the State of Utah, and provided for the disposition of unallotted lands on the Uncompahgre Reservation under the public land laws. Pursuant to said Act, and the Act of June 4, 1898, (30 Stat. 429) (see paragraph 15 hereof), and the Joint Resolution of June 19, 1902 (32 Stat. 744) amending the Act of May 27, 1902 (32 Stat. 245, 263) (see paragraphs 16

and 17 hereof), Uncompahgre Indians were given allotments in severalty upon the Uncompahgre and Uintah Reservations, including ultimately 63,915.51 acres in allotments on the Uintah Reservation by 1905, and the unallotted portions of the Uncompahgre Reservation were opened for disposition under the public land laws. By the Act of May 27, 1902 (32 Stat. 245, 263), as amended by the Joint Resolution of June 19, 1902, (32 Stat. 744), (see paragraphs 16 and 17 hereof), the United States appropriated and paid to the Uintah and White River Utes, $60,064.48 which had been received from the Uncompahgres for allotments on the Uintah Reservation.

15. An Act of June 4, 1898, (30 Stat. 429) a copy of which is appended hereto (Appendix J) directed and authorized the President to appoint a commission to make allotments in severalty, with the consent of the Indians properly residing on Uintah Indian Reservation, "to the said Indians and to such of the Uncompahgre Indians as may not be able to obtain allotments within the Uncompahgre reservation," and also provided,

> "Sec. 2. That said commission shall also obtain, by the consent of a majority of the adult male Indians properly residing upon and having an interest in the said Uintah Indian Reservation, the cession to the United States of all the lands within said reservation not allotted or needed for allotment as aforesaid. The agreement for such cession shall be reported by said commission and become operative when ratified by Act of Congress; and thereupon such ceded lands shall be held in trust by the United States for the purpose of sale to citizens thereof: *Provided,* That the United States shall pay no sum or amount whatever for said lands so ceded. Said lands shall be sold in such manner and in such quantities and for such prices as may be determined by Congress: *Provided,* That the amounts so received shall, in the aggregate be sufficient to pay said Indians in full the amount agreed

upon for said lands. All sums received from the sales of said lands shall be placed in the Treasury of the United States for said Indians, and shall be exclusively devoted to the use and benefit of the Indians having interests in the lands so ceded.

16. The Act of May 27, 1902, (32 Stat. 245, 263), a copy of the pertinent portions of which is appended hereto (Appendix K) and incorporated by reference, provided for individual allotments and disposition of unallotted lands on the Uintah Reservation, as follows:

"That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes of Ute Indians, to be ascertained as soon as practicable by an inspector, shall cause to be allotted to each head of a family eighty acres of agricultural land which can be irrigated and forty acres of such land to each other member of said tribes, said allotments to be made prior to October first, nineteen hundred and three, on which date all the unallotted lands within said reservation shall be restored to the public domain: *Provided,* That persons entering any of said land under the homestead law shall pay therefor at the rate of one dollar and twenty-five cents per acre: *And provided further,* That nothing herein contained shall impair the rights of any mineral lease which has been approved by the Secretary of the Interior, or any permit heretofore issued by direction of the Secretary of the Interior to negotiate with said Indians for a mineral lease; but any person or company having so obtained such approved mineral lease or such permit to negotiate with said Indians for a mineral lease on said reservation, pending such time and up to thirty days before said lands are restored to the public domain as aforesaid, shall have in lieu of such lease or permit the preferential right to locate under the min-

ing laws not to exceed six hundred and forty acres of contiguous mineral land, except the Raven Mining Company, which may in lieu of its lease locate one hundred mining claims of the character of mineral mentioned in its lease; and the proceeds of the sale of the lands so restored to the public domain shall be applied, first, to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions; and the remainder, under the direction of the Secretary of the Interior, shall be used for the benefit of said Indians. And the sum of seventy thousand and sixty-four dollars and forty-eight cents is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid to the Uintah and the White River tribes of Ute Indians, under the direction of the Secretary of the Interior, whenever a majority of the adult male Indians of said tribes shall have consented to the allotment of lands and the restoration of the unallotted lands within said reservation as herein provided.

"Said item of seventy thousand and sixty-four dollars and forty-eight cents to be paid to the Uintah and White River Utes covers claims which these Indians have made on account of the allotment of lands on the Uintah Reservation to Uncompahgre Indians and for which the Government has received from said Uncompahgre Indians money aggregating sixty thousand and sixty-four dollars and forty eight cents; and the remaining ten thousand dollars claimed by the Indians under an Act of Congress detaching a small part of the reservation on the east and under which Act the proceeds of the sale of the lands were to be applied for the benefit of the Indians.

Pursuant to this Act and amendments thereto, more fully set out hereafter, allotments in severalty, aggregating

39,349.84 acres by 1905, were made to the Uintah and White River Indians, and surplus lands (with the exception of forest reserve and reclamation withdrawals and certain mineral entries) were restored to the public domain, and opened for disposition under the public land laws for the benefit of the Indians. Substantial amounts of said surplus lands were sold, and $1,184,996.33 in proceeds from such sales was set up for the benefit of the Indians under an account headed "Proceeds of Uintah and White River Ute Lands." By Order of the Secretary of the Interior, August 25, 1945 (10 F.R. 12409), a copy of which is appended hereto (Appendix L) and incorporated by reference, all undisposed-of opened lands of the former Uintah Reservation were "restored to tribal ownership for the use and benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah. . ."

17. A Joint Resolution of June 19, 1902 (32 Stat. 744), a copy of the pertinent portions of which is appended hereto (Appendix M) and incorporated by reference, supplemented and modified the Act of May 27, 1902, *supra.* The Resolution provided that,

> "In addition to the allotments in severalty to the Uintah and White River Utes of the Uintah Indian Reservation in the State of Utah, the Secretary of the Interior shall, before any of said lands are opened to disposition under any public land law, select and set apart for the use in common of the Indians of that reservation such an amount of nonirrigable grazing lands therein at one or more places as will subserve the reasonable requirements of said Indians for the grazing of livestock.
>
> "All allotments hereafter made to Uncompahgre Indians of lands in said Uintah Indian Reservation shall be confined to agricultural land which can be irrigated, and shall be on the basis of eighty acres to each head of a family and forty acres to each other

> Indian, and no more. The grazing land selected and set apart as aforesaid in the Uintah Indian Reservation for the use in common of the Indians of that reservation shall be equally open to the use of all Uncompahgre Indians receiving allotments in said reservation of the reduced area here named."

The Resolution also provided that the $70,064.48 previously appropriated by the Act of May 27, 1902, *supra*, in satisfaction of claims of the Uintah and White River Tribes of Ute Indians, as set forth in the Act (see paragraphs 12, 14, and 16 hereof), should be paid without awaiting the action of the Indians upon the program of allotments and disposition of unalloted and unreserved lands proposed by the Act of May 27, 1902, *supra*.

18. An Act of March 3, 1903 (32 Stat. 982, 997-8), a copy of the pertinent provisions of which is appended hereto (Appendix N) and incorporated by reference, provided,

> ". . . That the Secretary of the Interior shall forthwith send an inspector to obtain the consent of the Uintah and White River Ute Indians to an allotment of their land as directed by the Act of May twenty-seventh, nineteen hundred and two, and if their consent, as therein provided, can not be obtained by June first, nineteen hundred and three, then the Secretary of the Interior shall cause to be allotted to each of said Uintah and White River Ute Indians the quantity and character of land named and described in said Act: . . ."

19. The Act of March 3, 1905 §33 Stat. 1048, 1069-1070), a copy of the pertinent provisions of which is appended hereto (Appendix O) and incorporated by reference, extended the time for opening the Uintah Indian Reservation, provided generally for the disposition of unreserved and unallotted lands under the general provisions of the

homestead and town-site laws, the proceeds to be used for the benefit of the Indians, made other changes in the provisions of the 1902 Act for the disposal of unallotted lands, and provided for reservation of forest lands and reservoir sites prior to opening, as follows:

> "That before the opening of the Uintah Indian Reservation the President is hereby authorized to set apart and reserve as an addition to the Uintah Forest Reserve, subject to the laws, rules, and regulations governing forest reserves, and subject to the mineral rights granted by the Act of Congress of May twenty-seventh, nineteen hundred and two, such portion of the lands within the Uintah Indian Reservation as he considers necessary, and he may also set apart and reserve any reservoir site or other lands necessary to conserve and protect the water supply for the Indians or for general agricultural development, and may confirm such rights to water thereon as have already accrued: *Provided*, That the proceeds from any timber on such addition as may with safety be sold prior to June thirtieth, nineteen hundred and twenty, shall be paid to said Indians in accordance with the provisions of the Act opening the reservation."

20. Pursuant to the authority granted by the Act of March 3, 1905, *supra*, approximately 1,010,000 acres of land within the Uintah Indian Reservation (more fully described hereafter) were added to and made a part of the Uintah Forest Reserve, by Proclamation of the President on July 14, 1905, (34 Stat. Pt. III 3116). A copy of said proclamation is appended hereto (Appendix P) and incorporated by reference. Quantities of timber were sold from time to time from off such lands prior to 1920, and, pursuant to the the Act of March 3, 1905, *supra*, $63,024.83 in proceeds therefrom was transferred to accounts for the benefit of the Indians, as follows: $62,724.83 to an account "Proceeds of Uintah and White River Ute Lands," and

$300 to an account "Indian Moneys Proceeds of Labor, Uintah and Ouray Indians."

21. Pursuant to the authority granted by the Act of March 3, 1905, *supra*, approximately 93,000 acres of land in the Uintah Indian Reservation were reserved for "reservoir site necessary to conserve the water supply for the Indians, or for general agricultural development," by proclamation of the President on August 3, 1905, (34 Stat. Pt. III 3141). By Proclamation of August 14, 1905, the reservation was modified by excluding certain lands, thereby reducing the reservation to approximately 60,160 acres. The said Proclamations are appended hereto (Appendix Q) and incorporated by reference. By orders of May 13, 1907, and November 11, 1909, copies of which are appended hereto [Appendix R] and incorporated by reference, 56,868.51 acres of the 60,160 acres theretofore reserved by the above Proclamations, were withdrawn, by the Secretary of the Interior pursuant to Section 3 of the reclamation Act of June 17, 1902 (32 Stat. 388), for irrigation works for the Strawberry Valley project.

22. By the Act of April 4, 1910, (36 Stat. 269, 285), a copy of the pertinent portions of which is appended hereto (Appendix S) and incorporated by reference, Congress extinguished "All right, title and interest of the Indians" in the "lands in the former Uintah Indian Reservation in the state of Utah, which were set apart by the President for reservoir and other purposes under the provisions of the Act approved March third, nineteen hundred and five, xxx and which were by the Secretary of the Interior withdrawn for irrigation works under the provisions of the reclamation Act of June seventeenth, nineteen hundred and two, in connection with the reservoir for the Strawberry Valley project." The area embraced within the above description constitutes 56,868.51 acres (see paragraph 21 hereof), more fully described in paragraph 26 hereof, and is the subject of the claim for just compensation in Docket No. 47570. The said Act of April 4, 1910, *supra*, appropriated $1.25

per acre for the lands thus taken to be paid from the reclamation fund "for the benefit of the Uintah Indians," subject to the same disposition as the proceeds of sales of lands in the former Uintah Indian Reservation, and payable in five annual installments. Pursuant to this Act, $71,085.65 was paid into the Treasury under the fund "Proceeds of Uintah and White River Lands," in five equal installments of $14,217.13 on February 21, 1912, October 28, 1912, June 27, 1913, September 22, 1914, and February 25, 1915, respectively. Under date of October 18, 1948, the Acting Commissioner of Indian Affairs, in response to a Call of this Court, reported that rentals or income from the said lands were collected between August 3, 1905, and April 4, 1910, and were paid or credited to plaintiffs, as follows: January, 1908, $10,408; September, 1908, $8,728; September, 1910, $9,945.88.

23. By an order of October 20, 1910, a copy of which is appended hereto (Appendix T) and incorporated by reference, six sections of unallotted lands within the former Uintah Indian Reservation were withdrawn from public entry, pursuant to the reclamation Act of June 17, 1902, *supra*, in connection with the Strawberry Valley reclamation project. The said lands are Sections 13, 14, 23, 24, 25 and 26, Township 4 South, Range 11 West, Uintah Special Meridian. Section 25 was within the area previously added to the Uintah National Forest by the Proclamation of March 3, 1905, *supra* (see paragraph 20 hereof). Sections 13, 14, 24, 25 and 26 were within the 60,160 acres set aside for reservoir and other purposes by the Proclamation of August 3, 1905, *supra* (see paragraph 21 hereof), and constitute the balance of that area not taken by the Act of April 4, 1910, *supra*, (see paragraph 22 hereof). Such right, title, and interest as plaintiffs may have had to the said Sections 13, 14, 23, 24, and 26 has not been (Tr. 184) extinguished, and no claim with reference to the said lands is included in either Docket No. 47569 or 47570. Said Section 25 was added to and made

a part of the Uintah Forest Reserve by the Proclamation of July 14, 1905, *supra*, pursuant to the Act of March 3, 1905, *supra* (see paragraphs 19 and 20 hereof), and the claim for just compensation based upon the said Section 25 is included in Docket No. 47569.

24. The Act of February 13, 1931, (46 Stat. 1092), a copy of which is appended hereto (Appendix U) and incorporated by reference, provided for payment for 973,777 acres of the 1,010,000 acres of land added to the Uintah National Forest on July 14, 1905 (see paragraph 20, *supra*), in the following terms:

> ". . . That there is hereby authorized to be appropriated the sum of $1,217,221.25 for payment, at the rate of $1.25 per acre, to the Uintah, White River, and Uncompahgre bands of Ute Indians in the State of Utah for nine hundred and seventy-three thousand seven hundred and seventy-seven acres of land belonging to such Indians being a part of the one million and ten thousand acres of land withdrawn from entry and sale by an Executive Order dated July 14, 1905, and included within the Uintah National Forest. Such sum shall be in full satisfaction of all claims of said Indians against the United States with respect to such lands and shall, when appropriated, be apportioned by the Secretary of the Interior among the said bands of Indians in such amounts as in his opinion the interests of said bands require: *Provided*, That as to the balance of said one million and ten thousand acres, amounting to thirty-six thousand two hundred and twenty-three acres, which has heretofore been classified as coal lands, the Secretary of the Interior shall proceed with all convenient speed to ascertain the value thereof and report his findings with respect thereto to the Congress not later than six months after the approval of this Act for such action as to the Congress shall seem appropriate. The amounts so apportioned, less the amount of the attorneys' fees

determined as provided in section 2, shall be credited to such bands on the books of the Treasury Department, shall bear interest at the rate of 4 per centum per annum and shall be disposed of in the same manner as now or hereinafter provided by law for the disposition of other funds belonging to said Indians."

Pursuant to said Act, $1,217,221.25 was set up on the books of the United States Treasury under the heading "Payment to Uintah, White River, and Uncompahgre Ute Indians of Utah for Lands." After payment of attorneys fees, $1,162,221.25 of said amount was transferred to the "Uintah, White River and Uncompahgre Ute 4% Fund, Utah", $1,146,319.50 of said funds was distributed *per capita* to the Uintah, White River, and Uncompahgre Bands of Ute Indians in the years 1935, 1936, and 1938. It is stipulated that for purposes of case No. 47569 Uncompahgre Indians received the benefit of $\frac{430}{1191}$ of the proceeds of the Act of February 13, 1931, *supra*.

25. The area of the former Uintah Reservation which was added to the Uintah National Forest by Proclamation of July 14, 1905, *supra*, and in payment for which $1.25 per acre was appropriated by the Act of February 13, 1931, *supra*, being the area for the taking of which just compensation is sought in No. 47569, constitutes 973,777 acres, and is described as follows:

Beginning at the northeastern most point of the former Uintah Indian Reservation; thence in a southerly direction down the eastern boundary of the said Reservation to the section line between Sections twenty-one (21) and twenty-eight (28), Township two (2) North, Range one (1) East, Uintah Meridian; thence westerly to the south-west corner of Section nineteen (19), Township two (2) North, Range one (1) West; thence northerly to the south-east corner of Section thirteen (13), Township two (2) North, Range two (2) West; thence westerly to the south-west corner of said

section; thence northerly to the north-west corner of Section twelve (12), said township; thence westerly to the south-west corner of Section four (4), said township; thence northerly to the north-west corner of said section; thence westerly to the north-east corner of Section four (4), Township two (2) North, Range three (3) West; thence southerly to the south-east corner of Section thirty-three (33), said township; thence westerly to the north-east corner of Township one (1) North, Range six (6) West; thence southerly to the south-east corner of Section thirteen (13), said township; thence westerly to the south-west corner of said section; thence northerly to the north-west corner of said section; thence westerly to the south-west corner of Section eleven (11), said township; thence northerly to the north-west corner of said section; thence westerly to the north-east corner of Section eight (8), said township; thence southerly to the south-east corner of Section seventeen (17), said township; thence westerly to the north-east corner of Section twenty-one (21), Township one (1) North, Range nine (9) West; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of Section nineteen (19), said township; thence southerly along the range line, allowing for the proper offset on the Base Line, to the north-west corner of Section eighteen (18), Township one (1) South, Range nine (9) West; thence easterly to the north-east corner of Section sixteen (16), Township one (1) South, Range eight (8) West; thence southerly to the south-east corner of Section thirty-three (33), said township; thence westerly to the north-east corner of Section four (4), Township two (2) South, Range ten (10) West; thence southerly to the south-east corner of Section sixteen (16), said township; thence westerly to the south-west corner of Section eighteen (18), said township; thence southerly to the south-east corner of Township two (2) South, Range eleven (11) West; thence westerly to the south-west corner of Section thirty-three (33), said township; thence northerly to the south-east cor-

ner of Section twenty (20), said township, thence westerly to the south-west corner of said section, thence northerly to the south-east corner of Section seven (7), said township; thence westerly to the south-west corner of said section; thence northerly to the north-west corner of said township; thence westerly to the north-east corner of fractional Section four (4), Township two (2) South, Range twelve (12) West; thence southerly to the south-east corner of Section thirty-three (33), said township; thence easterly to the north-east corner of Section three (3), Township three (3) South, Range twelve (12) West; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of Section eleven (11), said township; thence southerly to the south-east corner of said section; thence easterly to the north-east corner of Section thirteen (13), said township; thence southerly to the south-east corner of Township four (4) South, Range twelve (12) West; thence easterly to the south-west corner of Section eleven (11) West; thence northerly to the north-west corner of said section; thence easterly to the south-west corner of Section twenty-five (25), said township; thence northerly to the north-west corner of said section; thence easterly to the north-east corner of Section thirty (30), Township four (4) South, Range ten (10) West; thence southerly to the south-east corner of Section thirty-one (31), said township; thence easterly to the south-west corner of Township four (4) South, Range nine (9) West; thence northerly to the north-west corner of Section thirty (30), said township; thence easterly to the north-east corner of Section twenty-five (25), said township; thence southerly to the south-east corner of said township; thence easterly to the north-east corner of Section five (5), Township five (5) South, Range eight (8) West; thence southerly to the south-east corner of Section seventeen (17), said township; thence westerly to the south-west corner of Section eighteen (18), said township; thence southerly to the south-east corner of Section twenty-four (24), Township five (5) South, Range nine

(9) West; thence westerly to the north-east corner of Section twenty-eight (28), said township; thence southerly to the south-east corner of said section; thence westerly to the south-west corner of Section twenty-nine (29), said township; thence southerly to the north-west corner of Section twenty-nine (29), Township six (6) South, Range nine (9) West; thence easterly to the south-west corner of Section twenty-one (21), Township six (6) South, Range eight (8) West; thence northerly to the north-west corner of Section four (4), said township; thence easterly to the eastern boundary of the Uintah Indian Reservation; and thence along the said Indian Reservation boundary, first in general southwesterly, then a westerly, then a northwesterly and north, and then an easterly direction back to the point of beginning;

Excepting therefrom approximately 36,223 acres, classified as coal lands, and more particularly described as follows:

Township 1 south, range 8 west, Uintah meridian, Utah: North half, and the north half of the south half of section 16; section 17; lots 2, 3, and 4, and the southeast quarter of the northwest quarter, and the east half of the southwest quarter, and the northeast quarter of the northeast quarter, and the south half of the northeast quarter, and the southeast quarter of section 18; lot 1, and the northeast quarter of the northwest quarter, and the north half of the northeast quarter of section 19.

Township 1 south, range 9 west, Uintah meridian, Utah; Southeast quarter of the northeast quarter, and the south half of section 13; south half of the south half of section 14; south half of the south half of section 15; the northwest quarter of the southwest quarter, and the south half of the south half of section 16; southwest quarter of the northeast quarter, and the south half of the northwest quarter, and the south half of section 17; section 18; lots 1, 3, and 4, and the northeast quarter of the northwest

quarter, and the east half of the southwest quarter, and the north half of the northeast quarter, and the southeast quarter of section 19; section 20; section 21; section 22; section 23; north half and the southwest quarter, and the northwest quarter of the southeast quarter of section 24; the northwest quarter of the northwest quarter of section 25; the north half of section 26; north half of section 27; the north half of section 28; the north half and the east half of the southwest quarter and the north half of the southeast quarter of section 29; lots 1, 2, and 3, and the east half of the northwest quarter, and the northeast quarter of section 30.

Township 1 south, range 10 west, Uintah meridian, Utah: The south half of the south half of section 10; the south half of the south half of section 11; the south half of the south half of section 12; section 13; section 14; section 15; section 16; the northeast quarter and south half of the northwest quarter, and the south half of section 17; the southeast quarter of the northeast quarter, and the southeast quarter of the southwest quarter, and the southeast quarter of section 18; section 19; section 20; section 21; section 22; section 23; section 24; the north half and the north half of the south half of section 25; section 26; section 27; section 28; section 29; the east half and lots 1, 2, 3, and 4, and the east half of the west half of section 30; lots 1, 2, 3, and 4, and the east half of the west half and the east half of section 31; section 32; the north half and the north half of the southwest quarter of section 33; the northeast quarter of the northeast quarter, and the west half of the northeast quarter, and the northwest quarter of section 34; the north half of the north half of section 35.

Township 1 south, range 11 west, Uintah meridian, Utah: Lots 1, 2, 3, and 4, and the east half of the west half, and the southeast quarter of section 18; section 19; the northwest quarter of the northwest quarter and the south half of the northwest quarter and the southwest quarter

and the west half of the southeast quarter of section 20; the east half and the the east half of the northwest quarter and the northeast quarter of the southwest quarter of section 25; the west half of the southwest quarter and the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section 28; section 29; section 30; the northeast quarter, and lots 1, 2, 3, and 4, and the east half of the west half, and the southeast quarter of section 31; section 32; section 33; section 34; the west half of section 35; the northeast quarter and the east half of the southeast quarter of section 36.

Township 1 south, range 12 west, Uintah meridian, Utah: Lots 1, 2, 3, and 4, and the south half of the south half of section 12; section 13; section 24; the northeast quarter, the northwest quarter, and the southeast quarter of section 25.

Township 2 south, range 10 west, Uintah meridian, Utah: Section 4, section 5; section 6; section 7; section 8; section 9.

Township 2 south, range 11 west, Uintah meridian, Utah: Lots 3 and 4 of section 2; lots 1, 2, 3, and 4, and the south half of the north half and the south half of section 3; lots 1, 2, 3, and 4, and the south half of the north half and the south half of section 4.

26. That area of the former Uintah Reservation reserved for reservoir and other purposes by Proclamations of August 3 and August 4, 1905 *supra*, and withdrawn for the Strawberry Valley reclamation project by orders of May 13, 1907, and November 12, 1909, as to which all right, title, and interest of the Indians was extinguished by the Act of April 4, 1910, *supra*, being the area for the taking of which just compensation is sought in No. 47570, constitutes 56,868.51 acres and is described as follows:

Uintah Special Meridian. Section 18, 19, 29, 30, 31 and 32, Township 2 South, Range 11 West;

Sections 1 to 36 inclusive, Township 3 South, Range 11 West;

Sections 1 to 12, inclusive, 15 to 22, inclusive, and Sections 27 to 32, inclusive, Township 4 South, Range 11 West;

Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36, Township 2 South, Range 12 West;

Sections 1, 2, 12, Township 3, South, Range 12 West.

/s/ ERNEST L. WILKINSON
ERNEST L. WILKINSON
Attorney of Record for Plaintiffs

/s/ PENNY W. MORTON
Assistant Attorney General

/s/ FLOYD L. FRANCE
Attorney for the United States

ADDENDUM B

UNITED STATES
DEPARTMENT OF AGRICULTURE
FOREST SERVICE
324 25th Street
Ogden, Utah 84401

APR 8 1977

Honorable Scott M. Matheson
Governor of Utah
State Capitol
Salt Lake City, Utah 84114

Dear Governor Matheson:

We have reviewed the Ute Indian Tribe Resolution, 76-125, and Discussion Draft Agreement Between the State of Utah and the Ute Tribe on Civil and Criminal Jurisdiction dated March 25, 1977. There are certain sections in the Resolution and the draft Agreement which would affect the management of portions of the Ashley, Uinta, and Wasatch National Forests. We appreciate your consideration of our concerns relating to these sections.

The Indian Resolution essentially proposes, in items 10 and 11, to give certain property and jurisdictional rights vested in the State of Utah and the United States within the original exterior boundary of the Uintah and Ouray Reservation to the Ute Indian Tribe. It is proposed in item 11 that the Ute Indian Tribe be given hunting and fishing rights without regard to State laws and in item 10 full control of camping and recreation on 989,000 acres of National Forest land which they have related to the Central Utah Project.

The National Forest lands included within the original exterior boundary of the Uintah and Ouray Reservation provide a wide range of goods and services to the public.

Recreation use of this area, which includes 6 reservoirs and 31 lakes which will be stabilized, is and will be heavy. Much of the High Uintas Primitive Area is also encompassed within the boundary. Over 400,000 visitor days of use were recorded during 1975. Some of the recreation areas within this boundary now or to be constructed are the Strawberry, Current Creek, Whiterocks, and Upper Stillwater Reservoirs.

Under Definitions, item (d), non-trust lands; item (e), original exterior boundaries, and the comments under item 3, *Present Conflict*, we believe that the original Reservation boundaries were disestablished and the present Reservation boundaries include only the trust lands. The Act of March 3, 1905 (33 Stat. 873, 1070), authorized the establishment of the Uinta National Forest, which was accomplished by Presidential proclamation on July 14, 1905. The Presidential proclamation removed the lands from the Uintah and Ouray Reservation and placed them within the Uinta Forest Reserve to be subject to laws, rules, and regulations governing Forest Reserves. On February 13, 1931, Congress appropriated the sum of $1,217,221.25 to be paid to the Ute Indian Tribe for full satisfaction for lands taken in 1905, except for 36,223 acres which had been classified as coal lands. Public Law 84-717 under the Act of July 14, 1956, provided for settlement of the claims on the remaining 36,223 acres. Pursuant to formal stipulation of the parties, a consolidated judgment was entered by the Court of Claims for this case, No. 47569, and four vested cases No. 87568, 47510, 47511, and 47572, in favor of the plaintiffs and against the defendants in the amount of $3,250,000 in full settlement of all claims arising out of the five cases. Through these actions jurisdiction and tribal claims to the lands within the National Forest were disposed of and all rights, title, and interests to the lands were acquired by the United States. Since all of the Indian rights to these lands were acquired by the United States, there is no basis for considering them as part of the Re-

servation. The boundaries of the Reservation would be in common with the exterior National Forest boundaries established by the 1905 proclamation and would not extend to the boundaries as established by Executive Order of October 3, 1861.

Item 3, *Present Conflict,* would provide the Tribe certain jurisdictional protections on non-trust lands where vital Indian interests are at stake. We believe the Agreement is referring to the hunting and fishing rights of tribal members as indicated under items 4 and 5. Item 4 states that the Ute Indian Tribe, "shall have the right to hunt, fish, boat, and trap within the original exterior boundaries of the Uintah and Ouray Reservation" and, "In addition, the Tribe agrees to regulate hunting, fishing, and trapping practices of the members of the Tribe so as to insure the maintenance of a proper biological balance between populations and available habitat. . . ." It further provides, "that all leases of such public lands entered into after the date of this Agreement shall recognize the hunting and fishing rights of tribal members free from any such consent or permission by the lessee."

The only reference we have been able to find concerning rights of the Indians to hunt and fish is in the unratified treaty of June 8, 1865, and October 30, 1865, which included the Utah Yampah Ute, Pah-vant, Sanpete Ute, Trim-p-nogs, and Cum-nm-bah Bands of the Utah Indians. Article 1 of this treaty indicates that the Indians would surrender and relinquish to the United States all their possessory rights of occupancy in the lands claimed and occupied by them within the areas of the thirty-eight and forty-first parallel in Utah. This area includes the width of the State and extends southward from approximately the south boundary of Wyoming to the thirty-eight parallel, which is approximately twenty miles north of Cedar City. Article IV of this unratified treaty states, "The right of taking fish at usual and accustomed grounds and stations is further reserved to said Indians in common with all

white citizens of the Territory and of erecting temporary houses for the purpose of curing them, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands."

This unratified treaty would indicate that the fishing and hunting rights of the Ute Tribe could include approximately 75 percent of the State of Utah. If the State recognizes the Tribe's rights to hunt and fish within the 1861 reservation boundaries on the 989,000 acres on which all rights were acquired from the Indian Tribe, then it is possible the Tribe could assert an even stronger claim to hunting and fishing rights to the lands described in the 1865 unratified treaty.

Item 4 provides that all leases of public land entered into after the date of the Agreement shall recognize the hunting and fishing rights of tribal members free from any consent or permission by the lessee. Item 6 provides, "The parties recognize their mutual interest in protecting environmental values from damage that might result from uncontrolled growth of public recreational facilities within the original exterior boundaries of the Reservation. The parties therefore agree that the United States shall consult with the State and the Tribe on all plans, construction, developments, and operations of facilities within the original exterior boundaries of the Reservation pertaining to camping, boating, fishing, and other forms of public recreation." These items should either be deleted from the Agreement or modified to pertain only to tribal lands. The United States through the Secretary of Agriculture and the Forest Service is responsible for the administration of the National Forest lands, which includes the development of recreation facilities. These rights cannot be subordinated or diminished through agreement between the State and the Ute Indian Tribe. The only way these rights can be transferred to the Indian Tribe is by an Act of Congress or adjudication in a Federal Court.

We appreciate the opportunity to provide this information. We want to fully participate in any further deliberations on these issues.

Sincerely,

/s/ VERN HAMRE
VERN HAMRE
Regional Forester